

## **WAC 208-680G-050 Examination and Investigation Fees**

### **Supplement to CR-102(c) & (j)**

#### *Summary, Reasons Supporting, Explanation and Effects*

The Legislature intended that RCW 18.44 be interpreted and administered to protect escrow agent clients. “When read in its entirety, the Act reflects a legislative intent to protect clients of escrow agents.” *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 Wn.2d 490, 497 (1993). To that end, pursuant to RCW 18.44.410, the Director “has the power and broad administrative discretion to administer and interpret this chapter to facilitate the delivery of services to citizens of this state by escrow agents.” The Director believes adoption of this amendment is consistent with that intent and within the power and discretion granted to her.

#### **Summary and Explanation of Proposed Amendment**

WAC 208-680G-050, as adopted in 2001, provides in subsection (1) that the director may retain attorneys, CPAs, and other professionals as examiners or investigators at the expense of the person that is the subject of the examination or investigation. The current language in subsection (2) specifically provides that the expenses for required travel and services associated with an examination or investigation outside the state are to be borne by the person examined and investigated.

The current language is potentially misleading. Subsection (1) clearly authorizes reimbursement to DFI if it hires outside professionals and specialists, but is less clear when it comes to reimbursement of the costs of examinations by DFI examiners. Similarly, subsection (2) specifically allows the reimbursement of travel related expenses for out-of-state examinations, but is silent as to in-state examinations. The proposed amendments will clarify these possible ambiguities.

Subsection (2) would be amended to clearly state that examination and investigation related expenses are to be borne by the person examined or investigated, regardless of where that person is located. New Subsection (3) provides examples of the expenses for which reimbursement may be owed. Such expenses include staff time and travel expenses. The subsection requires DFI to provide an invoice detailing such expenses at a reasonable time following the investigation or examination. Payment of the invoiced amount is due within 30 days of the invoice date.

#### **Reasons Supporting Proposal**

RCW 18.44.121 states:

The director shall charge and collect the following fees as established by rule...

(5) An hourly audit fee...

In establishing these fees, the director shall set the fees at a sufficient level to defray the costs of administering this chapter.

Examination fees have not been charged to date and the other Escrow Agent Registration Act (“Act”) fees collected by DFI fall far short of defraying the costs of administering the Act. DFI took over administration of the Act on July 1, 1997. Since that date (though February 29, 2004), Act-related disbursements have exceeded escrow-related revenues by over \$1.3 million. Clearly, the current fee structure does not satisfy the legislative mandate to make the escrow program self-supporting.

### **Effects**

Amending WAC 208-680G-050 will give DFI clear authority to implement RCW 18.44.121(5) by clarifying the expenses for which DFI can seek reimbursement. Upon adoption of this rule, DFI plans to begin charging an hourly examination fee. The anticipated fee is \$62.50 per hour. As detailed in the attached Small Business Economic Impact Statement, DFI initially plans to charge only for time spent on-site at the office of an Escrow Agent, which generally averages about 3 days, and will not charge for the substantial off-site time relating to preparation, debriefing, or writing up examination findings, which generally averages about 2 days. Assuming DFI is able to perform 66 examinations per year and that it will collect \$1,500 for each exam, this rule would result in approximately \$100,000 in additional revenue for the year following adoption of the rule. (It is likely that DFI will collect less revenue as some exams may take less than 3 days on-site.) This revenue will help defray the costs of running the escrow program, but is not sufficient to make the program self-supporting. Additional fees and/or fee increases will be necessary in the future.